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South Carolina House of Representatives

Legislative Update

Robert J. Sheheen, Speaker of the House

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House Week in Review

Last week the House Ways and Means Committee gave approval to the General Appropriations Bill. The budget approved by the committee totals approximately \$3.51 billion, little changed from last year's budget of approximately \$3.53 billion. Under this proposal, most state agencies will not receive any funding increases for Fiscal Year 1993-1994, and some will receive less funding than they are receiving in this current fiscal year. The bill is being printed this week and will be presented before the full House next week.

At this Update went to press, the House Judiciary Committee was drafting a lengthy bill to restructure South Carolina's state government. The committee will begin addressing this bill on Wednesday and will vote on the measure later this week. If the committee approves the measure, the bill will be introduced before the full House next week.

With first reading of the General Appropriations Bill expected shortly in the House, the House last week adjusted its rules pertaining to what must be included in the appropriations bill. By a vote of 105-3, the House deleted the requirement that the House Ways and Means Committee version, House version and Report of the Conference or Free Conference Committee version of the appropriations bill must include the amounts appropriated for the current year, and also deleted the requirement that the Ways and Means version of the appropriations bill must include amounts recommended by the State Budget and Control Board.

On Wednesday, the House and Senate convened in joint assembly to hear the Chief Justice of the State Supreme Court, the Honorable David W. Harwell, give the annual State of the Judiciary address. The chief justice warned of the growing backlog of cases in the state's courts and stated that these unresolved cases and disputes threaten to stifle the state's economic growth. He stated the need for additional funding for the state's judicial branch to meet the growing backlog. The chief justice also announced his support for the certification and expanded criminal and civil jurisdiction of magistrates, the use of arbitration and mediation in some family and civil court matters, and alternative sentencing for non-violent offenders.

Legislative Update, February 23, 1993

Bills Introduced

The following bills were introduced in the House of Representatives last week. Not all bills introduced in the House are featured here. The summaries are arranged according to the standing committee to which the legislation was referred.

Agriculture, Natural Resources and Environmental Affairs

Designated Smoking Areas (H. 3540, Rep. Cromer). This bill provides that in indoor food consumption or dining areas of restaurants, cafeterias and other eating or dining establishments which serve food for consumption on their premises to the public, the owner, manager or agent in charge of the premises must conspicuously display signs designating smoking and mandatory non-smoking areas. In complying with these provisions, the owner, manager or agent would make every reasonable effort to prevent the designated smoking areas from impinging upon the designated, mandatory smoke-free areas by use of existing physical barriers and

ventilation systems. Anyone violating these provisions would be guilty of a misdemeanor and upon conviction be fined between \$10 and \$25.

Education and Public Works

Vehicles on Controlled-Access Highways (H. 3530, Rep. Barber). This bill would allow the current prohibition against the presence of animal-drawn vehicles, farm machinery, bicycles and other slow-moving motorized or non-motorized vehicles on controlled-access highways to be waived on designated sections of the highway within a county if the county council, after receiving the written advice and consent of the Department of Highways and Public Transportation, passes an ordinance eliminating the prohibition. The ordinance must designate the specific section of the controlled-access highway for which the prohibition is waived and the waiver specify the transportation modes which are allowed on the designated section of the controlled-access highway.

Judiciary

Appointments by County Legislative Delegations (H. 3500, Rep. Davenport). Under this bill, anyone appointed to a county board, commission or other entity by a county legislative delegation would serve at the pleasure of that delegation. This would apply even if these appointees are serving stated terms.

Resignation of Office To Run For Another Office (H. 3501, Rep. Davenport). This bill would require anyone holding public elective office to resign that office before becoming a candidate for another public elective office.

Alcoholic Beverage Licenses (H. 3503, Rep. Davenport). Under this bill, all powers conferred to the State Alcoholic Beverage Control Commission regarding the issuance of manufacturers', wholesalers' and retail licenses for the manufacture, sale, possession and delivery of alcoholic beverages would be devolved to the governing body of each county. All these licenses issued in a county must be issued by the governing board of that county.

Increased Penalties for Perjury (H. 3505, Rep. Cromer). Under this bill, penalties would increase for anyone encouraging perjury or encouraging another person to commit perjury in state courts. The fine imposed on someone convicted of perjury would rise from \$100 to \$1,000 and the prison sentence imposed would increase from 6 months to 1 year. The fine imposed on someone procuring a witness to commit perjury would rise from \$200 to \$1,000, and the prison sentence imposed would rise from 6 months to 1 year. The sentence of hard labor which may be imposed on someone convicted of perjury would rise from a maximum of 7 years to a maximum of 10 years.

Expanded Magisterial Jurisdiction over Larceny Cases (H. 3517, Rep. D. Smith). This bill expands the jurisdiction of magistrates to include all offenses which may be subject to penalties of either fine or forfeiture not exceeding \$1,000, as opposed to the current limit of \$200. The bill also allows magistrates to have jurisdiction of larcenies involving stolen property if the stolen property does not exceed \$1,000 in value, as opposed to the current limit of \$20. Crimes involving malicious injury to animals or other personal property, malicious injury to real property, and larceny of livestock and bicycles would be tried in magistrate's court if the damaged, destroyed or stolen property was less than \$1,000 in value, with the penalty upon conviction being a maximum fine of \$1,000 or imprisonment not exceeding 30 days. Cases of petit larceny also would be tried in magistrate's court if the value of stolen goods was less than \$1,000, with conviction for the first offense resulting in a fine not exceeding \$1,000 or imprisonment not exceeding 30 days, while conviction for a second offense would be a felony, resulting in a fine not exceeding \$2,000 and imprisonment of 3 to 10 years. Cases in which a person buys or receives stolen property worth \$1,000 or less also would be tried in magistrate's court, with conviction for a first offense being a maximum fine of \$1,000 or imprisonment not exceeding 30 days and higher penalties for a second or subsequent offense as currently provided by state law.

Other offenses which would be tried in magistrate's court if the value of the property stolen or unreturned was \$1,000 or less are (1) breach of trust with a fraudulent intent; (2) obtainment of signature or property by false pretenses; (3) obtainment of property under false tokens or letters; and (4) failure to return equipment after its lease or rental agreement expires. The penalty upon conviction would be a maximum fine of \$1,000 or imprisonment not exceeding 30 days.

Recording of Deeds (H. 3518, Rep. R. Young). Under this bill, an affidavit no longer would be required as a prerequisite for recording a deed or other instrument in writing. Instead, as a prerequisite, this bill would require a deed to be signed by the grantor, mortgagor, vendor or lessor, with the signing acknowledged by the grantor, mortgagor, vendor or lessor in the presence of 2 witnesses, taken before an officer within the state or other official (e.g., justice of the peace, clerk of court of record) competent to administer an oath. The officer would then sign a form of acknowledgement, certifying that the grantor or maker appeared before the officer that day to acknowledge the execution of the instrument.

Voter Registration Forms for Students (H. 3519, Rep. Cobb-Hunter). This bill would require the school board or board of trustees of all public high schools, colleges and universities to provide to all students 18 and older a voter registration form, returnable by mail to the county board of registration or the school board under the provisions of the state's mail-in voter

registration procedure. Furthermore, by the 10th day of each month, each school board must send a copy of all voter registration information collected the preceding month to the county board of registration in which each student resides.

Juvenile Restitution (H. 3521, Rep. Wofford). This bill provides that when a child by decree of the Family Court is found to be under its jurisdiction, and following the decree the Court places the child on probation, then the child must be supervised by the Department of Youth Services, unless otherwise ordered by the court. Additionally, the court would be allowed to impose either or both monetary restitution or participation in supervised work or community service restitution as a condition of probation. The Department of Youth Services, in coordination with local and, additionally, state community agencies, would develop and encourage the development of supervised work sites and places of employment for a child ordered to perform supervised work or community service restitution. A juvenile ordered to perform community service restitution as a condition of probation or who agrees to perform community service restitution as a condition of participating in a pretrial diversionary program supervised by the Department of Youth Services would pay a supervision fee to the Department of 1 dollar for every 5 hours of community service restitution ordered performed or which is agreed to be performed by the juvenile up to \$50 for each offense. The supervision fee would be due and payable on the date of the dispositional hearing or on the date the juvenile accepts the conditions imposed for participation in a pretrial diversionary program supervised by the Department. A juvenile ordered to pay monetary restitution would pay a 15 percent surcharge on all restitution payments. The supervision fees and monetary restitution surcharges would be retained by the Department and used to supervise and administer these programs. Fees and surcharges collected could be retained and carried forward from 1 fiscal year to the next to be used for the same purposes.

The bill also specifies that the Court can commit the child to the custody of the Department of Youth Services, as an alternative to committing the child to the guardianship of any other public or private institution authorized to care for children or placing the child in a family home or under the guardianship of a suitable person.

Creation of State Department of Transportation (H. 3522, Rep. Barber). This bill would abolish the Department of Highways and Public Transportation and in its place establish a State Department of Transportation as an administrative agency of state government. The Department of Transportation would consist of 8 divisions: (1) Finance and Administration; (2) Construction, Engineering, and Planning; (3) Motor Vehicle Services; (4) Mass Transit; (5) Motor Carrier Services; (6) Aeronautics; (7) Public Railways; and (8) Motor Vehicle Management. The functions, powers and duties of the Aeronautics Commission, Public Railways Commission, Motor Vehicles Management Division of the Budget and Control Board, and the State

Board of Education for transport of pupils and school buses would be transferred to the Department of Transportation, as would be these agencies' records, property, personnel and unexpended appropriations. The State Highway Patrol and its records, property, personnel and unexpended appropriations would be transferred to the State Law Enforcement Division (SLED).

This bill provides for establishment of the Office of Secretary of Transportation. The secretary would be appointed by the governor with the advice and consent of the General Assembly, for a term of 4 years coterminous with the governor. The secretary would serve in office until a successor is appointed. To qualify for this position, a candidate would have to possess a strong knowledge of the field of transportation, have administrative ability, and must not have served as a member of the Commission of the Department of Highways and Public Transportation within 2 years of the time that the term of office for the appointment would begin. Before entering the discharge of his office, the Secretary would take an oath of office as prescribed by the Constitution and give bond to the state in the sum of \$50,000 for faithful performance of duties. He would devote his entire time to the duties of the office and would be prohibited from engaging in any occupation or business interfering with or inconsistent with his duties or serving on or under any committee of a political party. He also would be prohibited from employing, transferring, promoting or advancing any close relative, by blood or marriage, to a position which is under the control or management of the Secretary. The Secretary would be allowed to establish administrative districts as necessary for the proper and efficient management of the Department. The secretary would serve as the Department's executive and administrative head and would carry out the policies and administrative affairs of the Department. He may employ personnel as authorized by these provisions and for which funds have been authorized by the general appropriations act. The bill lists practices in which the secretary may not engage while holding his position. The Executive Director and members of the Department of Highways and Public Transportation Commission, Aeronautics Commission, and Public Railways Commission, along with the Director of the Division of Motor Vehicles Management of the Budget and Control Board and the Director of Transportation within the State Department of Education would continue to serve at their posts until the Secretary of Transportation is appointed and qualified.

The bill also provides for creation of a Transportation Oversight Commission to assist in, recommend and monitor implementation of programs and expenditure of funds under the Department of Transportation. The state's 6 congressional districts would constitute and create transportation districts for the state. The General Assembly would elect 2 commissioners from each district, with each commissioner required to be a resident of the district they represent, and each commissioner would serve a 4-year term. A member of the General Assembly would not be allowed to serve on the Commission for a year after leaving office. These commissioners would constitute the Transportation Oversight

Committee, and the bill lists their duties. The Office of Transportation Inspector General would be established within the Transportation Oversight Commission. He would be authorized to receive and investigate any problem on behalf of any interested individual relating to the Department of Transportation.

The bill lists the duties and powers of the Department of Transportation, which include most of the duties and powers currently retained by the Department of Highways and Public Transportation plus newly acquired ones. The Department of Transportation also would be required to develop a general mass transit program and policy for the State in order to encourage efficient development, implementation, operation, evaluation and monitoring of both public and private mass transit systems. Before building new or expanding existing primary highways, the Department would consider and make a determination as to whether it is financially and physically feasible to include high occupancy vehicle lanes (HOV lanes), when the expansion is in a metropolitan area; (2) pedestrian walkways or sidewalks; and (3) bike lanes and paths. A copy of this determination would be submitted to the State Energy Office. Also, the Department, at the beginning of each regular session of the General Assembly, would make a detailed report to the General Assembly and to the Transportation Oversight Commission showing an analysis of the Department's accomplishments in the past year, future highway needs of the state and other information as currently required to be compiled by the Department of Highways and Public Transportation. Currently the Highway Department makes this report only to the General Assembly, and at any time (not necessarily at the beginning) of the regular session.

The Secretary also would appoint 2 deputy secretaries, who would serve at his pleasure. The bill prescribes their duties and responsibilities. The Secretary also would appoint a district director for each administrative district. The district director would be the chief administrative officer of each administrative district and would serve at the pleasure of the Secretary. The district director also would be responsible for coordinating and managing all aspects of the Department of Transportation's operations at the administrative district level.

Divisions established under the Department would be administered by a Division Director, who would serve at the pleasure of the Secretary of Transportation. The bill lists the responsibilities of Division Directors. The Secretary would have exclusive authority to employ chief counsel, staff attorneys and support staff as necessary to represent the Department in legal matters. The Secretary also would have the authority to retain independent adjusters for purposes of investigating and adjusting claims and suits arising under workers' compensation, motor vehicle damage and personal injury damage programs involving the Department regarding liability exposure and recovery of potential. The Secretary would serve on the Interagency Council on Public Transportation and would appoint an Executive Assistant to the Council, with the advice and consent of the Council.

The bill would require that before a county or municipal

corporation may accept a deed to a newly constructed road or before agreeing to maintain the newly constructed road, the county or municipal corporation would have to obtain an affidavit from the donor and contractor who constructed the road indicating that all construction costs have been paid and the road is free of encumbrances.

The Department of Transportation would be authorized to pay from state highway funds claims of employees arising under the provisions of the state's workers' compensation law which are recommended for payment by the Department and which have the approval of the South Carolina Workers' Compensation Commission.

In each odd-numbered year, the Department of Transportation would be required to review the construction needs for the state highway programs. Upon conclusion of the review, the Department would recommend to the General Assembly projects it considers advisable in the ensuing year. In making its review and recommendations, the Department could consider a number of socioeconomic and transportation factors. The bill lists these factors, which are identical to the factors which currently must be considered in determining projects to be funded under the Strategic Highway Plan for Improving Mobility and Safety Program (or SHIMS program).

Under this bill, the formula for allocating "C funds" to counties would change. No longer would the allocation be based partially on the ratio of the county's land area to the total land area of the state. Instead, allocation would be based 50 percent on the ratio the population of the county bears to the population of the state and 50 percent based on the ratio the mileage of rural public roads in the county bears to the total rural road mileage in the state. Additionally, roads on which C funds are to be expended would require the approval of the majority of the county's council members, as opposed to approval of a majority of the county's legislative delegation (the latter of which was declared unconstitutional by the State Supreme Court last October).

The bill also established a separate and distinct state highway bond fund and state highway bond fund debt service. Revenue derived from additional taxes on gasoline sales, stored gasoline, fuel sold by a supplier to an unlicensed person, and the additional road tax on motor carriers must be remitted to the State Treasurer to be credited to the state highway bond fund debt service. This fund would operate in lieu of the current SHIMS program, which, along with its select oversight committee, would be abolished. Both the bond fund and its debt service must be separate and distinct from the state general fund and other highway funds. Proceeds of all issuances of state highway bonds must be deposited and remain part of the state highway bond fund. All earnings and investments of any monies deposited to the credit of the Highway Bond Fund and Highway Bond Fund Debt Service must accrue to be deposited in their respective account. Money from the state highway bond fund could only be expended for purposes delineated in the resolution authorizing issuance. Bonds must be retired over a 30 year period from revenue derived from the additional taxes.

The bill provides that on the effective date of this act, the Department of Transportation must review all pending construction projects under the SHIMS program, including projects which have been let and projects which are under construction. From this review, the Department would prepare a report that details all the projects, including the approximate location of the project and the estimated costs of completing these projects. The Department must issue the report to the Joint Bond Review Committee and the Budget and Control Board. All funds not approved by the Department for the continuation of construction projects would be transferred to the newly-established State Highway Bond Fund and all funds approved by the Department for the continuation of construction projects must be transferred to the state highway fund to be used for the completion of the projects.

The Motor Vehicle Management Division established within the Department of Transportation would be headed by a Director, or "Fleet Manager," appointed by and reporting directly to the Secretary of Transportation. This division would assume the responsibilities now held by the State Budget and Control Board pertaining to management, operation and acquisition of the state's motor vehicle fleet. Titles to school buses and service vehicles, currently held by the State Department of Education, would under this bill be held by the Department of Transportation.

Fraudulent Obtainment of Workers' Compensation Benefits (H. 3523, Rep. Sharpe). This bill provides that anyone who by fraudulent conduct enables an employer, carrier, employee, dependent or service provider to obtain an undeserved advantage or benefit under the Workers' Compensation law is guilty of a felony and upon conviction would be fined not more than \$50,000, jailed up to 5 years, or both. Where appropriate, a party obtaining the undeserved economic advantage or benefit may be ordered to pay full restitution of premium payments avoided by fraud, benefits fraudulently withheld, or benefits obtained by fraud. The Workers' Compensation Commission would promptly refer cases of fraud to the Attorney General's office.

Delinquent Child Support Payments (H. 3526, Rep. Shissias). This bill would require clerks of court to provide consumer credit reporting agencies with a monthly report of persons who are delinquent in their child support payments in excess of \$1,000. This would take effect July 1, 1996.

Recall of Elected Officials (H. 3538, Rep. Davenport). This joint resolution seeks to amend the Constitution so as to provide that anyone in the executive or legislative branch of state or local government who is elected by the voters may be recalled and removed from office by those qualified electors eligible to vote in the election of his successor. If approved by the General Assembly, this measure would be submitted to the voters in the next general election. The General Assembly would provide by law the procedure necessary to implement these provisions.

Prohibition Against Partisan Political Campaign and Other Activities by Workers Paid by State (H. 3539, Rep. Davenport). This bill would prohibit anyone employed by the state or by any political subdivision of the state whose is paid, whether in whole or in part, by state funds from actively participating in partisan political management and partisan political campaigns. Among the activities which would be prohibited for employees under these provisions are: (1) declaring oneself as a candidate for nomination or election to a national, state or local office (except in the case of a nonpartisan election where neither candidate represents a political party); (2) serving as an officer in a political party, a member of a national, state or local committee of a political party, or a member of a committee of a partisan political club or organization; (3) distributing campaign literature or similar material of a partisan political nature at any time or place; or (4) endorsing or opposing a candidate or a political party in a partisan election through political advertisement, broadcast, campaign literature or similar material. The bill would not prohibit all political activities or acts of employees, however. As examples, an employee would still be allowed to wear a political badge or button, display a partisan political sign, poster or banner on the employee's private property, or contribute to a candidate in a partisan election.

Anyone violating these provisions would be guilty of a misdemeanor and upon conviction be fined \$500, jailed 30 days, or both. Additionally, the employee would forfeit 2 months' worth of wages, salary or compensation.

Voter Registration at State Agencies (H. 3541, Rep. Cobb-Hunter). This bill would allow the Department of Highways and Public Transportation, the Department of Social Services, and the Department of Health and Environmental Control to register people to vote through use of a form supplied by the South Carolina Election Commission. Completed application forms would be forwarded by the department on a weekly basis to the county registration board of the county in which the department or agency is located, except that during the last week allowed for registration before an election, the applications must be forwarded daily. Upon receipt of these forms from the department or agency, a county registration board must promptly forward the application form of any applicant not residing in the county serviced by that board to the county registration board of the county where the applicant resides. As an alternative, the applicant filling out the registration form at the department could, on his own, mail the form in to his county registration board.

Upon receipt of the application, the County Registration Board in the county where the applicant resides must determine if the applicant is qualified and the application is complete. If the applicant is qualified and the application is complete, the applicant would then be listed as a registered voter. If the applicant is not qualified or the application is incomplete, the

board must notify the applicant and, if appropriate, request any additional information.

Re-Examination of Insane Defendants (S. 51, Sen. Bryan). This bill provides that after a defendant is committed to the South Carolina State Hospital following a verdict of "not guilty by reason of insanity," he is entitled to a re-examination on his own petition or that of an interested person to the chief administrative judge. The treatment facility would inform the defendant of the right to petition for re-examination, and notice of this right must be given in writing upon commitment and every 6 months after commitment. The chief administrative judge would conduct proceedings upon receiving the petition. The proceedings would not be required if the petition is filed sooner than 6 months after the issuance of the commitment order or sooner than 6 months after holding a hearing. The costs must be borne by the petitioner unless the court determines that the petitioner cannot afford the costs.

Later Final Adjournment Date for General Assembly (S. 74, Sen. McConnell). Under this bill, the final, or sine die, adjournment date for the annual session of the General Assembly would be the first Thursday in November, as opposed currently to the first Thursday in June. The regular annual session would adjourn the first Thursday in June, but would remain adjourned only until called by the chair. Under the new final adjournment date, the session could be extended by concurrent resolution adopted by a 2/3 vote of both the House and the Senate. During the time between the adjournment date of the first Thursday in June and the final adjournment date in November, if the revenue forecast of the Board of Economic Advisors to the State Budget and Control Board projects that revenues at the end of the fiscal year will be less than appropriated expenditures for that year, the General Assembly must be called back into regular session by the President of the Senate and Speaker of the House, to consider only (1) bills amending the general appropriations act; (2) gubernatorial vetoes; (3) consideration of conference and free conference reports; (4) receipt and confirmation of appointments; (5) ratification of acts; (6) the concurrence or nonconcurrence on any legislative matters received from the other House; (7) local matters; and (8) resolutions affecting final adjournment.

Sentence and Judgment of Court of General Sessions (S. 194, Sen. Hayes). Under this bill, the sentence and judgment of the court of general sessions in a criminal case against an individual may be enforced in the same manner by execution against the property of the defendant as is provided by law for enforcing the judgments of the courts of common pleas in civil actions. Before a general sessions court could enter a judgment against a defendant's property, however, the judge would have to make findings of fact as to the amount of the judgment to be entered against the defendant.

The findings would have to be supported by the preponderance of the relevant evidence as is offered by the parties.

Labor, Commerce and Industry

Auto Insurance Reform (H. 3496, Rep. Klauber). This bill provides for the abolishment of the Reinsurance Facility as of October 1, 1993 and creation of the South Carolina Joint Underwriting Association. This association would consist of all insurers licensed to write auto insurance policies in this state. Every insurer is, and would have to remain, a member of the association as a condition for continuing to write these policies in the state. The purpose of this association would be to provide auto insurance on a self-supporting basis to the fullest extent possible. The association would consist of 7 directors appointed by the governor. 1 director would represent the general public, 4 directors would represent auto insurers who are members of the Association, and 2 directors would be agents authorized to represent auto insurers licensed to do business in the state.

Under this bill, the Facility recoupment charge no longer would be included in the premiums of those who qualify for the safe driving discount. However, if the Facility incurs losses, these losses must be distributed among the insured drivers until all losses are accounted for by the Insurance Commissioner. The bill provides the formula for determining the recoupment fee for insured drivers.

The association would have the power on behalf of its members to make agreements among themselves with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to or have lost their safe driver discount, but are unable to procure such insurance through ordinary means, and insurers may agree among themselves on the use of reasonable rate modifications for this insurance. These agreements and rate modifications would be subject to the approval of the Department of Insurance. The Department, after consultation with insurers licensed to write auto liability insurance in South Carolina, would adopt a reasonable plan(s) for equitable apportionment among the insurers of applicants for such insurance who are in good faith entitled to or have lost their safe driver discount but are unable through ordinary methods to procure such insurance. The plan(s) would include rates for classification of risks and rates by driver classification and territory. The bill prescribes limits which the association may not exceed in providing private passenger auto insurance coverage. For example, the association would not be allowed to write more than \$250,000 coverage for bodily injury liability to 1 person in 1 accident.

If a driver covered by the association maintains a driving record without a chargeable accident or driving conviction for 3 consecutive years while covered by the association, the association must attempt to place the driver with an insurer in the voluntary market. This would not preclude the driver, however, from seeking

auto insurance coverage on the voluntary market at any time. If a driver has not been able to purchase insurance on the voluntary market after 7 consecutive years of maintaining a driving record with no chargeable accidents or driving convictions, the driver then must be placed by the association with an auto insurance company doing business in the voluntary market of South Carolina.

No later than 60 days after passage of this act, the board of the association would file with the insurance commissioner rates for personal protection as may be defined by law and rates for private passenger auto insurance liability and uninsured motorist coverages. The rates as offered by the association to those unable to purchase auto insurance in the voluntary market may come in any one of four categories, with the first form being a rate applying to all private passenger auto insurance risks qualifying for the safe driver discount and are insured directly by or ceded to the association. The rates in the other 3 categories depend on the number of surcharge points as applicable under the Uniform Merit Plan promulgated by the insurance commissioner. The 4 rates must be construed so that when the experience generated by them is combined, the association is able to provide private auto insurance on a self-supporting basis.

Auto insurers would be required to offer 4 different rates for auto insurance---(1) Preferred rate; (2) Standard rate; (3) Nonpreferred rate; and (4) Substandard rate. The bill defines these rates and who is eligible for these rates and provides that they are subject to surcharges and discounts under any approved merit rating plan promulgated or approved by the Insurance Commissioner.

Workers' Compensation Payments (H. 3524, Rep. Sharpe). This bill deletes the requirement that the Workers' Compensation Commission must provide by rule the method and procedure by which benefits can be suspended or terminated for any cause and instead provides that when an employee has been out of work due to a reported work-related injury or occupational disease for 8 days, an employer may start temporary total disability payments immediately and may continue these payments for up to 120 days without waiver of any grounds for denial of a claim as may appear following a good faith investigation. Once payment of temporary disability compensation has been commenced, it could be terminated or suspended immediately if the employee (1) has returned to work; (2) agrees that he is able to return to work and executes the proper commission form indicating that he is able to return to work; or (3) at any time within 120 days of the date that payments are commenced if a good faith investigation has revealed grounds for denial of the claim. If the employee has been released by the treating physician to work or to limited duty work and the employer provides work consistent with the terms upon which the employee has been released, compensation may be terminated or suspended if the employee refuses to return to work. If the employee refuses medical treatment or an examination or evaluation, he is not entitled to compensation benefits during the period of the refusal. Upon submission of documentation of the refusal of the employee of this

medical treatment, examination or evaluation to the Workers' Compensation Commission and notice to the employee, compensation may be terminated unless the employee requests a hearing within 10 days of receiving the notice. An employee could request a hearing to have temporary compensation reinstated after termination.

Failure to comply with these provisions may, as opposed to must, result in a penalty not exceeding 25 percent imposed on the carrier or employer computed on the amount of benefits withheld in violation of these provisions. The amount of the penalty must be paid to the employee in addition to the amount of benefits withheld.

Disability and Workers' Compensation (H. 3525, Rep. Sharpe). As pertaining to payouts under the State's Workers' Compensation Fund, this bill provides that in cases where a person has 50 percent or greater loss of his back, the injured employee is presumed, rather than deemed, to have suffered total and permanent disability. Furthermore, the presumption of total and permanent disability due to 50 percent or more loss of use of back may be rebutted by a preponderance of the evidence.

Smoke Detector Requirements for Residences (H. 3531, Rep. Littlejohn). This bill would require 1 and 2-family dwellings, including manufactured housing, to be equipped with approved and properly functioning smoke detectors. A newly-constructed dwelling or a dwelling remodeled in excess of 50 percent of its assessed value after December 31, 1993 must also be equipped with smoke detectors. The bill lists the types of detectors to be installed in these dwellings and provides for how they are to be installed.

The owner of a dwelling or the owner's authorized agent would be responsible for supplying and installing smoke detectors and in rented dwellings would provide the tenant at the time the tenant assumes possession of the dwelling instructions for testing the detectors. The tenant of the building would notify the owner or the owner's authorized agent of any deficiencies in the performance of smoke detectors, and upon learning that a smoke detector is deficient, the owner would repair or replace the detector. The bill prohibits a person from conveying a title to real estate which includes a dwelling or transfers possession of a building unless smoke detectors have been installed and are functioning as required by these provisions.

The owner or his agent, or the tenant, seller or purchaser of a dwelling would not be liable for damage, injury or death resulting from mechanical failure of a smoke detector required under these provisions unless the failure is caused by improper installation or maintenance by one or more of these persons. If a smoke detector malfunctions because of an intentional or negligent act on the part of the tenant or because of the manufacturer's negligent production of the detector, and the owner or his agent, or the tenant, seller or purchaser has no knowledge of the defective condition and exercised reasonable care in the acquisition, installation and maintenance of the detector, these

persons would not be liable for damage. No person would be allowed to remove or tamper with a properly-functioning smoke detector.

Upon entry into a dwelling on official business, including invitation by the owner or occupant in response to an emergency, the State Fire Marshal or a local fire official, or both, would enforce these provisions.

Anyone violating these provisions would be guilty of a misdemeanor and upon conviction be fined between \$50 and \$200 or jailed not more than 30 days for the second offense.

Medical, Military, Public and Municipal Affairs

Registration of Code Enforcement Officers (H. 3502, Rep. Davenport). This bill would require anyone performing building codes enforcement to be certified and registered by the South Carolina Building Codes Council, while requiring anyone performing fire codes enforcement to be certified and registered by the Division of the State Fire Marshal. The bill authorizes the Council to conduct hearings and proceedings pertaining to applications for becoming a building code inspector and requires the Council to keep records of hearings and proceedings, along with a register of applications for the certificates of registration showing the date of the application, name, qualifications and addresses and whether the certificate is approved or denied. Applicants and registrants for "building codes enforcement officer" would notify the Council within 10 days of any change in required information. The Division of the State Fire Marshal would administer certification and registration procedures for fire code enforcement officers in accordance with the established resident state fire marshal program as currently provided under state law. The bill provides the qualifications necessary to register as either of these enforcement officers. A local jurisdiction would be allowed to impose additional requirements upon a person employed or appointed as a building or fire codes enforcement officer in its jurisdiction.

Certificates of registration could be issued without examination to building codes enforcement officers and fire codes enforcement officers employed on the effective date of this act only for the position and locality held at the time of registration. This registration would be valid for 2 years and would be renewable. Anyone who is not registered and practices as a building or fire codes enforcement officer would be guilty of a misdemeanor and upon conviction be punished at the discretion of the court. If the Council or State Fire Marshal suspects that a person is violating or intends to violate these provisions, either office could order the person to refrain from that conduct. The Council or State Fire Marshal could apply to the Court of Common Pleas for an injunction restraining the person from the conduct.

The bill also would require municipalities and counties to adopt building, electrical, plumbing, mechanical gas and fire codes pertaining to the safety of structures within their jurisdictions. These codes or regulations would not apply to a public utility

corporation subject to regulation by the South Carolina Public Service Commission or the Liquefied Petroleum Gas Board, with the exception of structures used primarily for offices, storage, warehouses, shop areas or residential housing. Municipalities and counties would be allowed to establish regional agreements with other political subdivisions of the state to issue construction permits and enforce building and fire codes in order to provide services under these provisions and carry out these provisions.

The bill also would require all municipalities and counties to appoint a building official and a fire official and establish building inspection and fire codes inspection programs, along with promulgating regulations to implement enforcement of these codes. Other personnel may be authorized as needed to assist these officials in carrying out their duties. A timetable is specified as to the deadline by which municipalities and counties of varying populations must appoint these officials. The building and fire codes by which the municipalities and counties must abide also are listed, and they must be adopted within 6 months after the establishment of a building inspection and fire inspection department. Listed also are the construction codes by which these entities must abide, and municipalities and counties may appeal to the South Carolina Building Codes Council if these construction codes do not meet their needs because of physical or climatological conditions.

The bill also alters the membership of the State Building Codes Council so as to include, as examples, municipally-certified and county-certified building and fire officials, and provides that the terms of the Council's members, who are appointed by the governor, last 4 years.

Municipalities and counties also are authorized to pass and enforce local ordinances pertaining to the installation of residential fire protection systems without the prior approval of the State Building Codes Council.

Anyone violating the building or fire codes adopted under these provisions would be guilty of a misdemeanor and upon conviction be fined not more than \$200, jailed for a maximum of 30 days, or both. The Codes Council, local building and fire officials, municipal or county attorneys and other appropriate authorities would be allowed to apply for injunctive relief, mandamus or other appropriate proceeding for a violation of any building or fire codes adopted under these provisions. Nothing in these provisions prohibits local building or fire code enforcement officials from making inspections and enforcing locally-adopted codes on state-owned buildings or school districts, nor do these provisions modify the powers of the State Fire Marshal or the Commissioner of Labor.

Municipal Granting of Variances (S. 199, Sen. Hayes). This bill would allow a municipality, by ordinance, to permit or preclude the granting of a variance for a use of land, a building, or a structure that is prohibited in a given municipal district. Under current law, it is at the discretion the local Board of

Adjusters to authorize a variance. Under this bill, if a municipality does permit a variance, it could require the affirmative vote of 2/3 of the local adjustment board members present and voting. Furthermore, the governing body of a municipality would be authorized to overrule the decision of a local board of adjustment concerning a use variance, notwithstanding any other provisions.

Ways and Means

Revalidation Stickers for Special License Plates (H. 3497, Rep. Cromer). This bill provides that in those years when a metal plate is not issued for a special personalized motor vehicle license plate, a revalidation sticker with a distinctive serial number or other suitable means prescribed by the Department of Highways and Public Transportation must be issued and affixed in a space provided on the license plate assigned to the vehicle upon payment of the regular motor vehicle registration fee. There would be no additional charge for the revalidation of this special plate.

Appeal of Property Assessments (H. 3506, Rep. McTeer). This bill would allow the owner of personal property that is required to be licensed or registered with a state agency or department to appeal in writing to the county auditor the valuation of the property at any time on or before the last day the tax levied upon the assessment can be timely paid. This would apply to taxes paid after this act goes into effect.

Sales Tax Exemption for Government Purchases (H. 3516, Rep. Hutson). Under this bill, state and local government, including school districts, would be exempt from paying sales tax on purchases of tangible personal property.

Requirements for Classification of Land as Agricultural Real Property (H. 3533, Rep. A. Young). This bill would impose additional requirements on real property before it can be classified as agricultural real property for assessment purposes. If a tract is used to grow timber, the tract would have to be at least 5 acres, although tracts of timberland under 5 acres would be eligible to be agricultural real property when owned in combination with other tracts of nontimberland agricultural real property that qualify as agricultural real property. Under these provisions, tracts of timberland would have to be devoted actively to growing trees for commercial use.

For tracts not used to grow timber, the tract must be 10 acres or more, although nontimberland tracts under 10 acres could qualify as agricultural real property if the person making the application to the county assessor reported at least \$1,000 gross farm income on his federal income tax return for at least 3 of the 5 taxable years preceding the year of application. Additionally, a new owner making the application to the county assessor for a nontimberland

tract of less than 10 acres could claim the property as agricultural real property for each year for the first 5 years of operation if he files federal income tax returns reporting at least \$1,000 gross farm income in at least 3 of the first 5 years. If the new owner fails to meet the income requirements in the 5-year period, the tract is not considered agricultural real property and is subject to the rollback tax. Real property idle under a federal or state land retirement program or property idle pursuant to accepted agricultural practices is agricultural real property if the property otherwise would have qualified as such property subject to satisfactory proof to the assessor.

It would also be unlawful for a person to knowingly and wilfully make a false statement on an application to a county assessor for the classification of property as agricultural real property or for the special assessment ratio for certain agricultural real property. A person violating these provisions would be guilty of a misdemeanor and upon conviction be fined a maximum of \$200. Real property initially classified as agricultural real property and made ineligible for that classification by these additional requirements would not be subject to a rollback tax. These provisions would be effective for taxable years beginning after 1993.

Expedited Processing of Income Tax Returns (S. 44, Sen. Passailaigue). This bill authorizes the South Carolina Tax Commission to expedite income tax refunds for individual taxpayers experiencing significant hardships which warrant issuance of a refund in less than the normal processing period. To qualify for an expedited refund, a taxpayer must be experiencing a significant hardship consisting of (1) a medical emergency; (2) sudden financial hardship which, if unresolved, makes it impossible for the taxpayer to provide the basic requirements of living for himself or his family; (3) imminent eviction; (4) possible loss of job; (5) imminent bankruptcy; or (6) a hardship associated with military service.

The Tax Commission would determine eligibility for expedited refunds on a case by case basis. The Commission could determine hardship based on documents submitted by the taxpayer or based on verbal representations of the taxpayer made to appropriate commission officials. Upon determination of hardship and based on the taxpayer's need, the Commission would assign the refund a priority and expedite processing of the refund as follows: (a) a Priority 3 Refund would be processed within 3 weeks; (2) a Priority 2 Refund would be processed within 10 days; and (3) a Priority 1 Refund would be processed within 5 days.

Sale of Advertising Space by State Agencies (S. 47, Sen. Passailaigue and Sen. Rose). This bill would allow state agencies to contract to sell commercial advertising space in locations such as its publications, buildings, facilities, and on its vehicles, in exchange for cash payment. All money received pursuant to a contract entered into under these provisions must be deposited to

the credit of the advertising contract fund, which is hereby created in the state treasury. Of the money credited to the fund, the state agency that contracted to sell the advertising space must be given 40 percent of the revenues generated from the selling of space and reimbursed for expenses incurred. The money not given to the agency or instrumentality must be transferred to the general revenue fund.

The bill lists restrictions which must be met for any advertisement displayed in advertising space sold under these provisions. As examples, the advertisement could not promote or oppose a political candidate, issue or organization, nor could an advertisement promote discrimination on the basis of the race, color, religion, national origin, handicap, age, sex or ancestry of any person. Contracts entered into under these provisions could be awarded only by competitive bidding and to the highest bidder. Such a contract could only be entered into if there is a reasonable anticipation that the contract will produce a profit for the State or the contracting state agency or instrumentality. No state agency or instrumentality would erect any freestanding outdoor billboard or sign pursuant to these provisions, except as allowed at roadside rest areas under the control of the Department of Transportation. By January 31 of each year, the board of each agency selling advertising space would submit a report to the Governor, President of the Senate and Speaker of the House describing the opportunities for and results of sales of commercial advertising space by that agency.

These provisions would not apply to institutions of higher learning and the South Carolina Department of Parks, Recreation and Tourism. Furthermore, advertising would not be permitted in or on the State House, the State House grounds, the office buildings located on those grounds, or the area designated as the capitol complex.

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